

Internal Revenue Service, Treasury

§ 31.3121(b)(3)-1

in section 3121(a)(8)(B) for determining whether cash remuneration paid for agricultural labor constitutes wages (see paragraph (c) of § 31.3121(a)(8)-1).

(e) *Cross-reference.* See paragraph (b) of § 31.3121(b)-2 for provisions relating to the status of services of the character to which paragraphs (a) and (b) of this section apply which were performed before 1955 and the remuneration for which is paid after 1954.

[T.D. 6744, 29 FR 8310, July 2, 1964]

§ 31.3121(b)(2)-1 Domestic service performed by students for certain college organizations.

(a) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For purposes of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(b) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed therein are not within the exception.

(d) An organization is a *school, college, or university* within the meaning of section 3121(b)(2) if its primary function is the presentation of formal instruction, it normally maintains a regular faculty and curriculum, and it

normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder.

(e) Services of a household nature are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs) hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

(f) For provisions relating to domestic service in a private home of the employer, see § 31.3121(a)(7)-1.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 9167, 69 FR 76405, Dec. 21, 2004]

§ 31.3121(b)(3)-1 Family employment.

(a) Certain services are excepted from employment because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) (i) Services performed before 1961 by a father or mother in the employ of his or her son or daughter;

(ii) Services not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed after 1960 but prior to 1968 by a father or mother in the employ of his or her son or daughter;

(iii) Services not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed after 1967 by a father or mother in the employ of his or her son or daughter unless (a) the employer has a child (including an adopted child or stepchild) living in his or her home who is under age 18 or who has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the services are rendered; and (b) the employer is during the calendar quarter in which the services are rendered:

(1) A widow or widower;

(2) A divorced person who has not remarried; or

§ 31.3121(b)(3)–1T

26 CFR Ch. I (4–1–14 Edition)

(3) A married person who has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for such child for at least 4 continuous weeks in the calendar quarter in which the services are rendered; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) (i) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a)(2) (ii) and (iii) of this section, in addition to the family relationship, there is a further requirement that the services performed after 1960 and before 1968 for purposes of paragraph (a)(2)(ii) and after 1967 for purposes of paragraph (a)(2)(iii) shall be services not in the course of the employer's trade or business or shall be domestic service in a private home of the employer. The terms "services not in the course of the employer's trade or business" and "domestic service in a private home of the employer" have the same meaning as when used in § 31.3121(a) (7)–1, except that it is immaterial under paragraphs (a)(2) (ii) and (iii) of this section whether or not such services are performed on a farm operated for profit. The mere fact that a mental or physical disability, whether temporary or permanent, renders a child or spouse incapable of self-support does not necessarily mean that the child requires the personal care and supervision of an adult or that the spouse is incapable of caring for a child within the meaning of paragraph (a)(2)(iii) of this section. A written statement by a doctor of the existence of the mental or physical condition of the child or spouse which states that the child requires the personal care and supervision of an adult or that the spouse is incapable of caring for a child and which sets forth the period of time during which the condition has existed and is likely to exist will usually be sufficient evidence to establish the existence and duration of the condition at the time of the statement. Under paragraph (a)(3) of this section, in addition to the family relationship, there is a further requirement

that the son or daughter shall be under the age of 21, and the exception continues only during the time that the son or daughter is under the age of 21.

(c) [Reserved] For further guidance, see § 31.3121(b)(3)–1T(c).

(d) [Reserved] For further guidance, see § 31.3121(b)(3)–1T(d).

(e) [Reserved] For further guidance, see § 31.3121(b)(3)–1T(e).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8311, July 2, 1964; T.D. 7374, 40 FR 30950, July 24, 1975; T.D. 9554, 76 FR 67365, Nov. 1, 2011]

§ 31.3121(b)(3)–1T Family employment (temporary).

(a) [Reserved] For further guidance, see § 31.3121(b)(3)–1(a).

(b) [Reserved] For further guidance, see § 31.3121(b)(3)–1(b).

(c) Services performed in the employ of a corporation are not within the exceptions, except as provided in paragraph (d). Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

(d) A disregarded entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter (Procedure and Administration Regulations) shall not be treated as a corporation for purposes of applying section 3121(b)(3). For purposes of applying section 3121(b)(3), the owner of the disregarded entity will be treated as the employer.

(e) Paragraphs (c) and (d) of this section apply with respect to wages paid on or after November 1, 2011. However, taxpayers may apply paragraphs (c) and (d) of this section to wages paid on or after January 1, 2009.

(f) *Expiration date.* The applicability of paragraphs (c) and (d) of this section expires on or before October 31, 2014.

[T.D. 9554, 76 FR 67365, Nov. 1, 2011]

§ 31.3121(b)(4)–1 Services performed on or in connection with a non-American vessel or aircraft.

(a) Services performed within the United States by an employee for an employer "on or in connection with" a vessel not an American vessel, or "on or in connection with" an aircraft not